

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

**APPROXIMATELY TWELVE
THOUSAND (\$12,000) DOLLARS IN
UNITED STATES CURRENCY**

Defendant.

CIVIL ACTION NO.: 2:07-cv-687-MEF

NOTICE OF FILING EVIDENTIARY SUBMISSION

The Defendant files the attached, Defendant's Exhibit A, Deposition Excerpts, in support of their Reply To Plaintiff's Brief In Opposition To Defendant's Motion For Summary

Judgment:

/s Dustin J. Fowler
Dustin J. Fowler (FOW017)
Buntin, Etheredge, & Dowling, LLC
185 N. Oates Street
Dothan, Alabama 36301

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2008, electronically filed the foregoing with the Clerk Of Court using the CM/ECF system which will send notification of such filing to the following:

Tommie Hardwick
Assistant United States Attorney
Middle District of Alabama
131 Clayton Street
Montgomery, Al 36101-0197

/s Dustin J. Fowler

Dustin Fowler

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4
5 CIVIL ACTION NUMBER

6 2:07CV687-MEF

7
8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 APPROXIMATELY TWELVE THOUSAND
12 DOLLARS (\$12,000) IN UNITED
STATES CURRENCY,

13 Defendant.

14

15

16 DEPOSITION OF DERRICK DAVIS

17 Date: November 1, 2007

18 Time: 2 p.m.

19

20

21

22 COURT REPORTER:

23 APRIL R. BENDINGER, CSR

COPY

1 A P P E A R A N C E S

2

3 FOR THE DEFENDANT:

4 Mr. Dustin Fowler

5 BUNTIN, ETHEREDGE & DOWLING

6 185 North Oates Street

7 Dothan, Alabama 36303

8

9 Mr. Trant Bullard

10 BULLARD & BULLARD

11 224 West Main Street

12 Dothan, Alabama 36303

13

14

15 FOR THE UNITED STATES:

16 Mr. John Harmon

17 ASSISTANT UNITED STATES ATTORNEY

18 131 Clayton Street

19 Montgomery, Alabama 36101

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22

23

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1 S T I P U L A T I O N

2 IT IS STIPULATED AND AGREED by and
3 between the parties through their respective
4 counsel that the deposition of DERRICK DAVIS may
5 be taken before April R. Bendinger, Notary
6 Public, State at Large, at the United States
7 Federal Courthouse in Dothan, Alabama on
8 November 1, 2007, commencing at approximately
9 2 p.m.

10 IT IS FURTHER STIPULATED AND
11 AGREED that the signature to and the reading of
12 the deposition by the witness is waived, the
13 deposition to have the same force and effect as
14 if full compliance had been had with all laws
15 and rules of Court relating to the taking of
16 depositions.

17 IT IS FURTHER STIPULATED AND
18 AGREED that it shall not be necessary for any
19 objections to be made by counsel to any
20 questions, except as to form or leading
21 questions and that counsel for the parties may
22 make objections and assign grounds at the time
23 of trial or at the time said depositions is

1 offered in evidence, or prior thereto.

2 I, April R. Bendinger, a Court
3 Reporter of Dothan, Alabama, and a Notary Public
4 for the State of Alabama at Large, acting as
5 Commissioner, certify that on this date,
6 pursuant to the Federal Rules of Civil
7 Procedure, and the foregoing stipulation of
8 counsel, there came before me at the United
9 States Federal Courthouse in Dothan, Alabama,
10 commencing at approximately 2 p.m. on November
11 1, 2007, DERRICK DAVIS in the above cause, for
12 oral examination, whereupon the following
13 proceedings were had:

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1 DERRICK DAVIS,
2 being first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. HARMON:

6 Q. Would you state your full name,
7 please, sir.

8 A. Derrick Wesley Davis.

9 Q. And, Mr. Davis, I am John Harmon,
10 I introduced myself earlier. I am the assistant
11 district attorney handling this case. You are
12 the same Derrick Davis who filed a claim in the
13 United States vs. \$12,204.00 in United States
14 currency?

15 A. Uh-huh, (affirmative).

16 MR. BULLARD: You might want to
17 answer yes or no. Uh-huh and uh-uh is hard for
18 her to take down.

19 Q. What is your current address,
20 Mr. Davis?

21 A. 2903 Ellington Street.

22 Q. In Dothan?

23 A. Uh-huh, (affirmative).

1 permit at that time for the weapon?

2 A. Yeah. I just didn't have it with
3 me.

4 Q. What county issued the permit?

5 A. Houston.

6 Q. Had you rented a room there at the
7 Holiday Inn?

8 A. No, sir.

9 Q. Did your friend? I think you said
10 his name is James.

11 A. James Simpson.

12 Q. Had he rented a room there?

13 A. No, sir, not that I know of.

14 Q. Did you know anyone that had a
15 room there that night?

16 A. No, sir.

17 Q. Did you go up to a room at all
18 during the period of time when you went to the
19 Holiday Inn Express?

20 A. No, sir.

21 Q. Were you approached by the police
22 that night?

23 A. Yes, sir.

1 A. Same. I seen him out before.
2 Went to school together, kind of around the same
3 age.

4 Q. Did you see Mr. Johnson there that
5 night?

6 A. No, sir.

7 Q. Were you aware they had rented
8 rooms there at the Holiday Inn Express that
9 night?

10 A. No, sir.

11 Q. Now, the -- I believe you were
12 present when your attorneys discussed earlier
13 there was some document that you submitted as
14 supporting your claim. Also, I see in there,
15 there was -- you indicated there was a loan from
16 First Franklin in the amount of \$2,306.97. When
17 did you borrow this money? What date?

18 A. 11/27/06.

19 Q. For what purpose did you get this
20 loan, Mr. Davis?

21 A. Just to like pay off some bills,
22 you know what I'm saying, small bills and stuff.

23 Q. And did First Franklin advance

1 this money to you by check?

2 A. Yeah, they did.

3 Q. What did you do with that check?

4 A. Cashed it.

5 Q. Where did you cash it?

6 A. I want to say I went to their
7 bank, SouthTrust, I think. Wherever their bank
8 is at.

9 Q. Why did you cash the check,
10 Mr. Davis?

11 A. I needed the money.

12 Q. I guess -- I understand.

13 A. I guess I cashed it, because it
14 was a check.

15 MR. FOWLER: Can we clarify that.
16 Why else you would have a check.

17 Q. At the time that you got this
18 check, the Club Rio bank account wasn't in
19 existence, correct?

20 A. It was.

21 Q. Any reason you would have cashed
22 it rather than deposit it into the Club Rio
23 account?

1 much.

2 Q. I think you obtained an amount of
3 \$3,306.97. Do have any idea how much of that
4 was spent as of January 18, 2007?

5 A. No, I couldn't tell you.

6 Q. The other -- one of the other
7 things you submitted is a check from HSBC?

8 MR. FOWLER: That is the tax
9 check.

10 Q. Tax check, right. Which I took
11 that to mean that was an income tax refund
12 anticipation loan?

13 A. That was a check.

14 Q. I understand that. Did you go
15 somewhere and get a loan based on your expected
16 income taxes?

17 MR. FOWLER: Can I clarify this?
18 IRS check, you wanted your money quick, right
19 then, you went to them, and they gave you a
20 check for doing it fast and handed it to you.

21 A. Right.

22 Q. In other words, this was a loan
23 which was guaranteed by your income tax refund?

1 A. Yes, yes. Yes.

2 Q. That was HSBC?

3 A. Uh-huh.

4 Q. Do you recall how much income tax
5 you were getting back?

6 A. Do I recall?

7 Q. Yes. What your income tax for
8 that period showed as your potential refund?

9 A. Around 4 or \$5,000.

10 Q. And you got this check on the day
11 of the arrest?

12 A. Exact same day.

13 Q. Let me ask you this. It's obvious
14 from the document, HSBC advanced you a check; is
15 that correct?

16 A. Right.

17 Q. Did you cash that check?

18 A. I did.

19 Q. Where did you cash the check?

20 A. At Chandlers.

21 Q. Chandlers?

22 A. It's like a -- kind of like a
23 food-mart, like Chandlers.

1 Q. Like a grocery store?

2 A. They cash checks. They cash
3 checks and stuff.

4 Q. They're in the business of cashing
5 checks?

6 A. Right, they're in the business of
7 it.

8 Q. How much did they charge you for
9 cashing that check?

10 A. Maybe a hundred bucks.

11 Q. Did you attempt to cash the check
12 at Wachovia where you had the bank account?

13 A. No.

14 Q. Any reason why you did not attempt
15 to cash it there as opposed to going to a check
16 cashing service?

17 A. No, no particular reason.

18 Q. Had you had a chance to spend any
19 of that money before it was seized on that
20 occasion?

21 A. No, sir.

22 Q. Other items that were advanced?
23 There was a check from a business venture, one

1 was dated September 4, 2006 in the amount of
2 \$1,000. What business was that advanced that
3 amount of money to you?

4 A. Club Rio.

5 Q. Did you essentially write a check
6 to yourself from the Club Rio account?

7 A. No. The way it worked, my sister
8 would pay me. She would write my check.

9 Q. And she is the one that wrote the
10 check for \$1,000?

11 A. Right.

12 Q. What did you do with that check,
13 cash it or deposit it?

14 A. I cashed it.

15 Q. Where did you cash it?

16 A. At Wachovia.

17 Q. Would it be your testimony that
18 you kept the \$1000 with you from September 4,
19 2006 until January 18, 2007?

20 A. I mean, I may have kept some of
21 it. I don't know.

22 Q. Do you believe, as you recall, did
23 you spend any of that \$1,000 during that period

1 from September 4, 2006 to January 18, 2007?

2 A. Yeah, I may have spent a little
3 bit.

4 Q. There's also a check, and I think
5 it's dated October 2, 2006. And I believe,
6 based upon representations that your attorney
7 made to me earlier, and you have a different
8 recollection, you certainly state that, although
9 the amount of the check is not written out, you
10 told your attorney it's for \$1,000. Do you
11 recall that check?

12 A. The one that doesn't have the
13 amount written on there?

14 Q. Yes, that's correct.

15 A. Yes, I recall that.

16 Q. Was it exactly for \$1,000?

17 A. Uh-huh, (affirmative).

18 Q. October 2, 2006, is the correct
19 date when you got that check?

20 A. Right.

21 Q. Who wrote that check to you?

22 A. My sister.

23 Q. Did you, in turn, on that \$1000,

1 what did you do with it? Did you deposit the
2 check or cash the check?

3 A. I cashed it.

4 Q. Did you keep the \$1000 with you
5 from October 2006 to January 2007?

6 A. Yeah. I started saving money. I
7 wanted to buy a car, so I started saving money.

8 Q. You say you were saving? Where do
9 you keep the money while it was in your
10 possession?

11 A. I would keep it on my person, like
12 with me.

13 Q. At all times?

14 A. Yeah.

15 Q. Now, the last one I see, and again
16 this was a Club Rio check?

17 A. Right.

18 Q. Last one I see is November 21,
19 2006 check in the amount of \$3,000?

20 A. Yes.

21 Q. Is that a Club Rio check?

22 A. It was.

23 Q. Was it written by your sister?

1 A. Right.

2 Q. What did you do with that check?
3 Cash it or deposit it?

4 A. I cashed it.

5 Q. Did you keep that money with you
6 until January, 2007?

7 A. Uh-huh, (affirmative).

8 Q. All three of these checks were
9 issued to you for what cause? What did you do
10 to obtain them?

11 A. I worked. I was part owner of the
12 business.

13 Q. Was this, for example, money paid
14 to you for your efforts in the furtherance of
15 the business?

16 A. Right.

17 Q. Now, the amount of money that was
18 seized was, I believe, \$12,204?

19 MR. FOWLER: One of those somebody
20 said 14, the Department of Justice.

21 MR. BULLARD: They had those
22 wrong. They finally came back and said -- can
23 we go off the record?

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/s Dustin J. Fowler

Dustin J. Fowler (FOW017)
Buntin, Etheredge, & Dowling, LLC
185 N. Oates Street
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Tommie Hardwick
Assistant United States Attorney
Middle District of Alabama
131 Clayton Street
Montgomery, Al 36101-0197

/s Dustin J. Fowler

Dustin Fowler

In	City of Dothan municipal court, Dothan, Alabama
CITY OF DOTHAN V.	
<u>Derrick Davis</u>	<u>MC/2-07-186</u>
City of Dothan Municipal Court	
Certified as a true and correct copy	
NAME OF ATTORNEY FOR DEFENDANT AT TIME OF TRIAL OR PLEA:	YO Number
ATTORNEY	<u>Melanie Walsh</u>
PUBLIC DEFENDER	ENTERED APPEARANCE
	APPOINTED (DATE) <u>2-15-08</u>

Defendant waived counsel knowingly, intelligently, freely and voluntarily (date) _____ Judge: _____
Youthful offender status ☐ GRANTED ☐ DENIED (date) _____ Judge: _____
PLEA: ☐ GUILTY ☐ NOT GUILTY ☐ STIPULATIONS OF FACTS

VERDICT: ☐ GUILTY ☐ NOT GUILTY

To the charge of Poss. of Marijuana
Upon recommendation from City Prosecutor: Prosecutor

JUDGEMENT: The defendant appear in open court and knowingly, intelligently and voluntarily entered the above plea; on the above verdict it is **ORDERED** that he/she ☐ pay a fine of \$ _____ and court costs **AND/OR** ☐ be imprisoned for a term of _____ days/year in the custody of the Dothan City Jail. ☐ With the defendant's consent, execution of sentence is suspended and he/she is placed on unsupervised probation for _____ year(s) **OR** ☐ all but _____ day(s)* of the sentence is/are suspended and he/she is placed on probation for _____ year (s), subject to the following conditions.

Fine	\$
Court Cost	\$
Attorney Fees	\$
Restitution	\$
Head Injury Fee	\$
Housing Fee	\$
Medical Fee	\$
Other	\$
Other	\$
Other	\$
Total	\$

- ☐ 11. Defendant conduct himself in a lawful and proper manner.
- ☐ 12. Pay to the Clerk of the Municipal Court the fine, costs of court, and any additional sums.
- ☐ 13. Pay restitution in the amount of \$ _____ to _____.
- ☐ 14. Complete Court Referral Program and present certificate of completion by _____ 9 AM, as mandated by the Mandatory Treatment Act of 1990 (12-23-1 Code of Alabama, 1975).
- ☐ 15. Complete _____ Community Service and present proof of completion by _____ 9 A.M.
- ☐ 16. Pay sums above by _____ 9AM or appear before this Court on this date.
- ☐ 17. Not to be found in or on the premises of _____ located at _____.
- ☐ 18. Not assault, communicate with or be in the presence of _____.
- ☐ 19. The sentence is to run concurrent with sentence in case number _____.
- ☐ 10. Probation to end: _____.
- ☐ 11. Complete Defensive Driving School and present certificate on _____ at 9 A.M.
- ☐ 12. Restitution Hearing set on _____ at 9 A.M.
- ☐ 13. Pay Housing, Maintenance, and Medical cost associated with the defendant's incarceration in the Dothan Jail as required in 14-6-22 CODE OF ALABAMA, 1975 (_____ days* at \$20/day + \$ _____ Medical costs
- ☐ 14. Pursuant to 14-6-22 Code of Alabama, 1975 Housing and Maintenance costs Remitted-[☐ ALL or ☐ \$ _____
- ☐ 15. Other _____

Other: This case is <input type="checkbox"/> Nol Pros or <input checked="" type="checkbox"/> Dismissed REASON <u>City Unable to Prosecute</u>		
Date of Disposition <u>02.29.08</u>	Signature of Municipal Judge <u>[Signature]</u>	Appeal/Bond Set at \$ _____
Case Appealed <input type="checkbox"/> Date _____	Bonded by _____	